

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 650
97TH GENERAL ASSEMBLY

Reported from the Committee on Commerce, Consumer Protections, Energy and the Environment, January 30, 2014, with recommendation that the Senate Committee Substitute do pass.

5012S.02C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 67.5090, 67.5092, 67.5094, 67.5096, 67.5098, 67.5100, 67.5102, and 67.5103, RSMo, and to enact in lieu thereof eight new sections relating to wireless communications infrastructure deployment.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 67.5090, 67.5092, 67.5094, 67.5096, 67.5098, 67.5100, 67.5102, and 67.5103, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 67.5090, 67.5092, 67.5094, 67.5096, 67.5098, 67.5100, 67.5102, and 67.5103, to read as follows:

67.5090. Sections 67.5090 to [67.5102] **67.5103** shall be known and may be cited as the "Uniform Wireless Communications Infrastructure Deployment Act" and is intended to encourage and streamline the deployment of **broadcast and** broadband facilities and to help ensure that robust wireless **radio based** communication services are available throughout Missouri.

67.5092. As used in sections 67.5090 to [67.5102] **67.5103**, the following terms mean:

(1) "Accessory equipment", any equipment serving or being used in conjunction with a wireless **communications** facility or wireless support structure. The term includes utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters, or similar structures;

(2) "Antenna", communications equipment that transmits or receives electromagnetic radio signals used in the provision of any type of wireless communications services;

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

11 (3) "Applicant", any person engaged in the business of providing wireless
12 communications services or the wireless communications infrastructure required
13 for wireless communications services who submits an application;

14 (4) "Application", a request submitted by an applicant to an authority to
15 construct a new wireless support structure, for the substantial modification of a
16 wireless support structure, or for collocation of a wireless facility or replacement
17 of a wireless facility on an existing structure;

18 (5) "Authority", each state, county, and municipal governing body, board,
19 agency, office, or commission authorized by law and acting in its capacity to make
20 legislative, quasi-judicial, or administrative decisions relative to zoning or
21 building permit review of an application. The term shall not include state courts
22 having jurisdiction over land use, planning, or zoning decisions made by an
23 authority;

24 (6) "Base station", a station at a specific site authorized to communicate
25 with mobile stations, generally consisting of radio transceivers, antennas, coaxial
26 cables, power supplies, and other associated electronics, and includes a structure
27 that currently supports or houses an antenna, a transceiver, coaxial cables, power
28 supplies, or other associated equipment;

29 (7) "Building permit", a permit issued by an authority prior to
30 commencement of work on the collocation of wireless facilities on an existing
31 structure, the substantial modification of a wireless support structure, or the
32 commencement of construction of any new wireless support structure, solely to
33 ensure that the work to be performed by the applicant satisfies the applicable
34 building code;

35 (8) "Collocation", the placement or installation of a new wireless facility
36 on existing structure, including electrical transmission towers, water towers,
37 buildings, and other structures capable of structurally supporting the attachment
38 of wireless facilities in compliance with applicable codes;

39 (9) "Electrical transmission tower", an electrical transmission structure
40 used to support high voltage overhead power lines. The term shall not include
41 any utility pole;

42 (10) "Equipment compound", an area surrounding or near a wireless
43 support structure within which are located wireless facilities;

44 (11) "Existing structure", a structure that exists at the time a request to
45 place wireless facilities on a structure is filed with an authority. The term
46 includes any structure that is capable of supporting the attachment of wireless

47 facilities in compliance with applicable building codes, National Electric Safety
48 Codes, and recognized industry standards for structural safety, capacity,
49 reliability, and engineering, including, but not limited to, towers, buildings, and
50 water towers. The term shall not include any utility pole;

51 (12) "Replacement", includes constructing a new wireless support
52 structure of equal proportions and of equal height or such other height that would
53 not constitute a substantial modification to an existing structure in order to
54 support wireless facilities or to accommodate collocation and includes the
55 associated removal of the preexisting wireless facilities or wireless support
56 structure;

57 (13) "Substantial modification", the mounting of a proposed wireless
58 facility on a wireless support structure which, as applied to the structure as it
59 was originally constructed:

60 (a) Increases the existing vertical height of the structure by:

61 a. More than ten percent; or

62 b. The height of one additional antenna array with separation from the
63 nearest existing antenna not to exceed twenty feet, whichever is greater; or

64 (b) Involves adding an appurtenance to the body of a wireless support
65 structure that protrudes horizontally from the edge of the wireless support
66 structure more than twenty feet or more than the width of the wireless support
67 structure at the level of the appurtenance, whichever is greater (except where
68 necessary to shelter the antenna from inclement weather or to connect the
69 antenna to the tower via cable);

70 (c) Involves the installation of more than the standard number of new
71 outdoor equipment cabinets for the technology involved, not to exceed four new
72 equipment cabinets; or

73 (d) Increases the square footage of the existing equipment compound by
74 more than two thousand five hundred square feet;

75 (14) "Utility", any person, corporation, county, municipality acting in its
76 capacity as a utility, municipal utility board, or other entity, or department
77 thereof or entity related thereto, providing retail or wholesale electric, natural
78 gas, water, waste water, data, cable television, or telecommunications or internet
79 protocol-related services;

80 (15) "Utility pole", a structure owned or operated by a utility that is
81 designed specifically for and used to carry lines, cables, or wires for telephony,
82 cable television, or electricity, or to provide lighting;

83 (16) "Water tower", a water storage tank, or a standpipe or an elevated
84 tank situated on a support structure, originally constructed for use as a reservoir
85 or facility to store or deliver water;

86 (17) **"Wireless communications service", includes the wireless**
87 **facilities of all services licensed to use radio communications pursuant**
88 **to Section 301 of the Communications Act of 1934, 47 U.S.C. § 301;**

89 (18) "Wireless facility", the set of equipment and network components,
90 exclusive of the underlying wireless support structure, including, but not limited
91 to, antennas, accessory equipment, transmitters, receivers, power supplies,
92 cabling and associated equipment necessary to provide wireless communications
93 services;

94 ~~[(18)]~~ (19) "Wireless support structure", a structure, such as a monopole,
95 tower, or building capable of supporting wireless facilities. This definition does
96 not include utility poles.

67.5094. In order to ensure uniformity across the state of Missouri with
2 respect to the consideration of every application, an authority shall not:

3 (1) Require an applicant to submit information about, or evaluate an
4 applicant's business decisions with respect to its designed service, customer
5 demand for service, or quality of its service to or from a particular area or site;

6 (2) Evaluate an application based on the availability of other potential
7 locations for the placement of wireless support structures or wireless facilities,
8 including without limitation the option to collocate instead of construct a new
9 wireless support structure or for substantial modifications of a support structure,
10 or vice versa; provided, however, that solely with respect to an application for a
11 new wireless support structure, an authority may require an applicant to state
12 in [its] **such applicant's** application that it conducted an analysis of available
13 ~~[collocation]~~ **collocation** opportunities on existing wireless towers within the
14 same search ring defined by the applicant, solely for the purpose of confirming
15 that an applicant undertook such an analysis;

16 (3) Dictate the type of wireless facilities, infrastructure or technology to
17 be used by the applicant, including, but not limited to, requiring an applicant to
18 construct a distributed antenna system in lieu of constructing a new wireless
19 support structure;

20 (4) Require the removal of existing wireless support structures or wireless
21 facilities, wherever located, as a condition for approval of an application;

22 (5) With respect to radio frequency emissions, impose environmental

23 testing, sampling, or monitoring requirements or other compliance measures on
24 wireless facilities that are categorically excluded under the Federal
25 Communication Commission's rules for radio frequency emissions under 47 CFR
26 1.1307(b)(1) or other applicable federal law, as the same may be amended or
27 supplemented;

28 (6) Establish or enforce regulations or procedures for RF signal strength
29 or the adequacy of service quality;

30 (7) **Establish or enforce regulations or procedures for**
31 **environmental safety for any wireless communications facility that is**
32 **inconsistent with or in excess of those required by OET Bulletin 65,**
33 **entitled Evaluating Compliance with FCC Guidelines for Human**
34 **Exposure to Radio frequency Electromagnetic Fields, Edition 97-01,**
35 **released August, 1997, and Supplement A: Additional Information for**
36 **Radio and Television Broadcast Stations;**

37 (8) In conformance with 47 U.S.C. Section 332(c)(7)(b)(4), reject an
38 application, in whole or in part, based on perceived or alleged environmental
39 effects of radio frequency emissions;

40 [(8)] (9) Impose any restrictions with respect to objects in navigable
41 airspace that are greater than or in conflict with the restrictions imposed by the
42 Federal Aviation Administration;

43 [(9)] (10) Prohibit the placement of emergency power systems that
44 comply with federal and state environmental requirements;

45 [(10)] (11) Charge an application fee, consulting fee, or other fee
46 associated with the submission, review, processing, and approval of an application
47 that is not required for similar types of commercial development within the
48 authority's jurisdiction. Fees imposed by an authority for or directly by a
49 third-party entity providing review or technical consultation to the authority
50 must be based on actual, direct, and reasonable administrative costs incurred for
51 the review, processing, and approval of an application. Except when mutually
52 agreeable to the applicant and the authority, total charges and fees shall not
53 exceed five hundred dollars for a collocation application or one thousand five
54 hundred dollars for an application for a new wireless support structure or for a
55 substantial modification of a wireless support structure. Notwithstanding the
56 foregoing, in no event shall an authority or any third-party entity include within
57 its charges any travel expenses incurred in a third-party's review of an
58 application and in no event shall an applicant be required to pay or reimburse an

59 authority for consultation or other third-party fees based on a contingency or
60 result-based arrangement;

61 [(11)] **(12)** Impose surety requirements, including bonds, escrow deposits,
62 letters of credit, or any other type of financial surety, to ensure that abandoned
63 or unused facilities can be removed unless the authority imposes similar
64 requirements on other permits for other types of commercial development or land
65 uses;

66 [(12)] **(13)** Condition the approval of an application on the applicant's
67 agreement to provide space on or near the wireless support structure for
68 authority or local governmental services at less than the market rate for space
69 or to provide other services via the structure or facilities at less than the market
70 rate for such services;

71 [(13)] **(14)** Limit the duration of the approval of an application;

72 [(14)] **(15)** Discriminate or create a preference on the basis of the
73 ownership, including ownership by the authority, of any property, structure, or
74 tower when promulgating rules or procedures for siting wireless facilities or for
75 evaluating applications;

76 [(15)] **(16)** Impose any requirements or obligations regarding the
77 presentation or appearance of facilities, including, but not limited to, those
78 relating to the kind or type of materials used and those relating to arranging,
79 screening, or landscaping of facilities if such regulations or obligations are
80 unreasonable;

81 [(16)] **(17)** Impose any requirements that an applicant purchase,
82 subscribe to, use, or employ facilities, networks, or services owned, provided, or
83 operated by an authority, in whole or in part, or by any entity in which an
84 authority has a competitive, economic, financial, governance, or other interest;

85 [(17)] **(18)** Condition the approval of an application on, or otherwise
86 require, the applicant's agreement to indemnify or insure the authority in
87 connection with the authority's exercise of its police power-based regulations; or

88 [(18)] **(19)** Condition or require the approval of an application based on
89 the applicant's agreement to permit any wireless facilities provided or operated,
90 in whole or in part, by an authority or by any entity in which an authority has
91 a competitive, economic, financial, governance, or other interest, to be placed at
92 or collocated with the applicant's wireless support structure.

67.5096. 1. Authorities may continue to exercise zoning, land use,
2 planning, and permitting authority within their territorial boundaries with

3 regard to the siting of new wireless support structures, subject to the provisions
4 of sections 67.5090 to 67.5103, including without limitation section 67.5094, and
5 subject to federal law.

6 2. Any applicant that proposes to construct a new wireless support
7 structure within the jurisdiction of any authority, planning or otherwise, that has
8 adopted planning and zoning regulations in accordance with sections 67.5090 to
9 67.5103 shall:

10 (1) Submit the necessary copies and attachments of the application to the
11 appropriate authority. Each application shall include a copy of a lease, letter of
12 authorization or other agreement from the property owner evidencing applicant's
13 right to pursue the application; and

14 (2) Comply with applicable local ordinances concerning land use and the
15 appropriate permitting processes.

16 3. Disclosure of records in the possession or custody of authority
17 personnel, including but not limited to documents and electronic data, shall be
18 subject to chapter 610.

19 4. The authority, within one hundred twenty calendar days of receiving
20 an application to construct a new wireless support structure or within such
21 additional time as may be mutually agreed to by an applicant and an authority,
22 shall:

23 (1) Review the application in light of its conformity with applicable local
24 zoning regulations. An application is deemed to be complete unless the authority
25 notifies the applicant in writing, within thirty calendar days of submission of the
26 application, of the specific deficiencies in the application which, if cured, would
27 make the application complete. Upon receipt of a timely written notice that an
28 application is deficient, an applicant may take thirty calendar days from receiving
29 such notice to cure the specific deficiencies. If the applicant cures the deficiencies
30 within thirty calendar days, the application shall be reviewed and processed
31 within one hundred twenty calendar days from the initial date the application
32 was received. If the applicant requires a period of time beyond thirty calendar
33 days to cure the specific deficiencies, the one hundred twenty calendar days'
34 deadline for review shall be extended by the same period of time;

35 (2) Make its final decision to approve or disapprove the application; and

36 (3) Advise the applicant in writing of its final decision.

37 5. If the authority fails to act on an application to construct a new
38 wireless support structure within the one hundred twenty calendar days' review

39 period specified under subsection 4 of this section or within such additional time
40 as may be mutually agreed to by an applicant and an authority, the application
41 shall be deemed approved.

42 6. A party aggrieved by the final action of an authority, either by its
43 affirmatively denying an application under the provisions of this section or by its
44 inaction, may bring an action for review in any court of competent jurisdiction
45 **within this state.**

67.5098. 1. Authorities may continue to exercise zoning, land use,
2 planning, and permitting authority within their territorial boundaries with
3 regard to applications for substantial modifications of wireless support structures,
4 subject to the provisions of sections 67.5090 to 67.5103, including without
5 limitation section 67.5094, and subject to federal law.

6 2. Any applicant that applies for a substantial modification of a wireless
7 support structure within the jurisdiction of any authority, planning or otherwise,
8 that has adopted planning and zoning regulations in accordance with sections
9 67.5090 to 67.5103 shall:

10 (1) Submit the necessary copies and attachments of the application to the
11 appropriate authority. Each application shall include a copy of a lease, letter of
12 authorization or other agreement from the property owner evidencing applicant's
13 right to pursue the application; and

14 (2) Comply with applicable local ordinances concerning land use and the
15 appropriate permitting processes.

16 3. Disclosure of records in the possession or custody of authority
17 personnel, including but not limited to documents and electronic data, shall be
18 subject to chapter 610.

19 4. The authority, within ninety calendar days of receiving an application
20 for a substantial modification of wireless support structures, shall:

21 (1) Review the application in light of its conformity with applicable local
22 zoning regulations. An application is deemed to be complete unless the authority
23 notifies the applicant in writing, within thirty calendar days of submission of the
24 application, of the specific deficiencies in the application which, if cured, would
25 make the application complete. Upon receipt of a timely written notice that an
26 application is deficient, an applicant may take thirty calendar days from receiving
27 such notice to cure the specific deficiencies. If the applicant cures the deficiencies
28 within thirty calendar days, the application shall be reviewed and processed
29 within ninety calendar days from the initial date the application was received. If

30 the applicant requires a period of time beyond thirty calendar days to cure the
31 specific deficiencies, the ninety calendar days' deadline for review shall be
32 extended by the same period of time;

33 (2) Make its final decision to approve or disapprove the application; and

34 (3) Advise the applicant in writing of its final decision.

35 5. If the authority fails to act on an application for a substantial
36 modification within the ninety calendar days' review period specified under
37 subsection 4 of this section, or within such additional time as may be mutually
38 agreed to by an applicant and an authority, the application for a substantial
39 modification shall be deemed approved.

40 6. A party aggrieved by the final action of an authority, either by its
41 affirmatively denying an application under the provisions of this section or by its
42 inaction, may bring an action for review in any court of competent jurisdiction
43 **within this state.**

67.5100. 1. Subject to the provisions of sections 67.5090 to 67.5103,
2 including section 67.5094, collocation applications and applications for
3 replacement of wireless facilities shall be reviewed for conformance with
4 applicable building permit requirements, National Electric Safety Codes, and
5 recognized industry standards for structural safety, capacity, reliability, and
6 engineering, but shall not otherwise be subject to zoning or land use
7 requirements, including design or placement requirements, or public hearing
8 review.

9 2. The authority, within forty-five calendar days of receiving a collocation
10 application or application for replacement of wireless facilities, shall:

11 (1) Review the collocation application or application to replace wireless
12 facilities in light of its conformity with applicable building permit requirements
13 and consistency with sections 67.5090 to 67.5103. A collocation application or
14 application to replace wireless facilities is deemed to be complete unless the
15 authority notifies the applicant in writing, within fifteen calendar days of
16 submission of the application, of the specific deficiencies in the application which,
17 if cured, would make the application complete. Each collocation application or
18 application to replace wireless facilities shall include a copy of a lease, letter of
19 authorization or other agreement from the property owner evidencing applicant's
20 right to pursue the application. Upon receipt of a timely written notice that a
21 collocation application or application to replace wireless facilities is deficient, an
22 applicant may take fifteen calendar days from receiving such notice to cure the

23 specific deficiencies. If the applicant cures the deficiencies within fifteen calendar
24 days, the application shall be reviewed and processed within forty-five calendar
25 days from the initial date the application was received. If the applicant requires
26 a period of time beyond fifteen calendar days to cure the specific deficiencies, the
27 forty-five calendar days' deadline for review shall be extended by the same period
28 of time;

29 (2) Make its final decision to approve or disapprove the collocation
30 application or application for replacement of wireless facilities; and

31 (3) Advise the applicant in writing of its final decision.

32 3. If the authority fails to act on a collocation application or application
33 to replace wireless facilities within the forty-five calendar days' review period
34 specified in subsection 2 of this section, the application shall be deemed approved.

35 4. The provisions of sections 67.5090 to 67.5103 shall not:

36 (1) Authorize an authority, except when acting solely in its capacity as a
37 utility, to mandate, require, or regulate the placement, modification, or collocation
38 of any new wireless facility on new, existing, or replacement poles owned or
39 operated by a utility;

40 (2) Expand the power of an authority to regulate any utility; or

41 (3) Restrict any utility's rights or authority, or negate any utility's
42 agreement, regarding requested access to, or the rates and terms applicable to
43 placement of any wireless facility on new, existing, or replacement poles,
44 structures, or existing structures owned or operated by a utility.

45 5. A party aggrieved by the final action of an authority, either by its
46 affirmatively denying an application under the provisions of this section or by its
47 inaction, may bring an action for review in any court of competent jurisdiction
48 **within this state.**

67.5102. In accordance with the policies of this state to further the
2 deployment of wireless communications infrastructure:

3 (1) An authority may not institute any moratorium on the permitting,
4 construction, or issuance of approval of new wireless support structures,
5 substantial modifications of wireless support structures, or collocations if such
6 moratorium exceeds six months in length and if the legislative act establishing
7 it fails to state reasonable grounds and good cause for such moratorium. No such
8 moratorium shall affect an already pending application;

9 (2) To encourage applicants to request construction of new wireless
10 support structures on public lands and to increase local revenues:

11 (a) An authority may not charge a wireless service provider or wireless
12 infrastructure provider any rental, license, or other fee to locate a wireless
13 **facility or wireless** support structure on an authority's property in excess of the
14 current market rates for rental or use of similarly situated property. If the
15 applicant and the authority do not agree on the applicable market rate for any
16 such public land and cannot agree on a process by which to derive the applicable
17 market rate for any such public land, then the market rate will be determined by
18 a [panel of three] certified [appraisers] **appraiser** licensed under chapter 339[,
19 using the following process. Each party will appoint one certified appraiser to the
20 panel, and the two certified appraisers so appointed will appoint a third certified
21 appraiser. Each appraiser will independently appraise the appropriate lease rate,
22 and the market rate shall be set at the mid-point between the highest and lowest
23 market rates among the three independent appraisals, provided the mid-point
24 between the highest and lowest appraisals is greater than or less than ten
25 percent of the appraisal of the third appraiser chosen by the parties' appointed
26 appraisers. In such case, the third appraisal will determine the rate for the
27 lease] **mutually agreed upon by the parties at the applicant's cost.** The
28 appraisal process shall be concluded within ninety calendar days from the date
29 the applicant first tenders its proposed lease rate to the authority. [Each party
30 will bear the cost of its own appointed appraiser, and the parties shall share
31 equally the cost of the third appraiser chosen by the two appointed appraisers.]
32 **In the event either party is dissatisfied with the value determined by**
33 **the appraiser, such party may bring an action for review in any court**
34 **of competent jurisdiction. The court shall rule on any such petition for**
35 **review in an expedited manner.** Nothing in this paragraph shall bar an
36 applicant and an authority from agreeing to reasonable, periodic reviews and
37 adjustments of current market rates during the term of a lease or contract to use
38 an authority's property; and

39 (b) An authority may not offer a lease or contract to use public lands to
40 locate a wireless support structure on an authority's property that is less than
41 fifteen years in duration unless the applicant agrees to accept a lease or contract
42 of less than fifteen years in duration;

43 (3) Nothing in subdivision (2) of this section is intended to limit an
44 authority's lawful exercise of zoning, land use, or planning and permitting
45 authority with respect to applications for new wireless support structures on an
46 authority's property under subsection 1 of section 67.5096.

67.5103. Notwithstanding any provision of sections 67.5090 to [67.5102]
2 **67.5103**, nothing herein shall provide any applicant the power of eminent domain
3 or the right to compel any private or public property owner, the department of
4 conservation, the department of natural resources, or the state highways and
5 transportation commission to:

6 (1) Lease or sell property for the construction of a new wireless support
7 structure; or

8 (2) Locate or cause the collocation or expansion of a wireless facility on
9 any existing structure or wireless support structure.

Unofficial ✓

Bill

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